

AMENDED IN ASSEMBLY APRIL 16, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1417

Introduced by Assembly Member Smyth

February 27, 2009

An act to amend ~~Section 594~~ *Sections 640.7 and 640.8* of the Penal Code, relating to vandalism.

LEGISLATIVE COUNSEL'S DIGEST

AB 1417, as amended, Smyth. Vandalism.

Existing law provides that any person who violates specified vandalism provisions on or within 100 feet of a highway or on a freeway, as specified, is guilty of a misdemeanor punishable by a fine or imprisonment or both a fine and imprisonment, as specified.

This bill would increase the penalties for violations of these provisions. Because the bill would increase the penalties for a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law, amended by Proposition 21, an initiative measure enacted by voters at the March 7, 2000, statewide primary election that requires a $\frac{2}{3}$ vote of the Legislature to substantively amend, makes a person who maliciously commits any of specified destructive acts with respect to the real or personal property of another guilty of vandalism.~~

~~This bill would make technical, nonsubstantive changes to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 640.7 of the Penal Code is amended to*
2 *read:*

3 640.7. Any person who violates Section 594, 640.5, or 640.6
4 on or within 100 feet of a highway, or its appurtenances, including,
5 but not limited to, guardrails, signs, traffic signals, snow poles,
6 and similar facilities, excluding signs naming streets, is guilty of
7 a misdemeanor, punishable ~~by~~ *as follows:*

8 (a) *If the amount of damage is less than five thousand dollars*
9 *(\$5,000), by a minimum fine of one thousand dollars (\$1,000) and*
10 *not more than ten thousand dollars (\$10,000), or by both this fine*
11 *and imprisonment in a county jail not exceeding six months, ~~or~~*
12 *by a fine not exceeding one thousand dollars (\$1,000), or by both*
13 *that imprisonment and fine. A second conviction under this*
14 *subdivision is punishable by this fine or by both this fine and*
15 *imprisonment in a county jail not exceeding one year, ~~or by a fine~~*
16 *not exceeding one thousand dollars (\$1,000), or by both that*
17 *imprisonment and fine.*

18 (b) *If the amount of damage is five thousand dollars (\$5,000)*
19 *or more, by a minimum fine of ten thousand dollars (\$10,000) and*
20 *not more than fifty thousand dollars (\$50,000), or by both this fine*
21 *and imprisonment in a county jail not exceeding six months. A*
22 *second conviction under this subdivision is punishable by this fine*
23 *or by both this fine and imprisonment in a county jail not exceeding*
24 *one year.*

25 *SEC. 2. Section 640.8 of the Penal Code is amended to read:*

26 640.8. Any person who violates Section 594, 640.5, or 640.6,
27 on a freeway, or its appurtenances, including sound walls,
28 overpasses, overpass supports, guardrails, signs, signals, and other
29 traffic control devices, is guilty of a misdemeanor, punishable ~~by~~
30 *as follows:*

31 (a) *If the amount of damage is less than five thousand dollars*
32 *(\$5,000), by a minimum fine of one thousand dollars (\$1,000) and*
33 *not more than ten thousand dollars (\$10,000), or by both this fine*

1 ~~and imprisonment in a county jail not to exceed one year, by a fine~~
2 ~~not to exceed five thousand dollars (\$5,000), or by both that~~
3 ~~imprisonment and fine.~~ As a condition of probation, the court may
4 order the defendant to perform community service not to exceed
5 480 hours over a period not to exceed 420 days during a time other
6 than his or her hours of school attendance or employment.

7 *(b) If the amount of damage is five thousand dollars (\$5,000)*
8 *or more, by a minimum fine of ten thousand dollars (\$10,000) and*
9 *not more than fifty thousand dollars (\$50,000), or by both this fine*
10 *and imprisonment in a county jail not to exceed one year. As a*
11 *condition of probation, the court may order the defendant to*
12 *perform community service not to exceed 480 hours over a period*
13 *not to exceed 420 days during a time other than his or her hours*
14 *of school attendance or employment.*

15 *SEC. 3. No reimbursement is required by this act pursuant to*
16 *Section 6 of Article XIII B of the California Constitution because*
17 *the only costs that may be incurred by a local agency or school*
18 *district will be incurred because this act creates a new crime or*
19 *infraction, eliminates a crime or infraction, or changes the penalty*
20 *for a crime or infraction, within the meaning of Section 17556 of*
21 *the Government Code, or changes the definition of a crime within*
22 *the meaning of Section 6 of Article XIII B of the California*
23 *Constitution.*

24 ~~SECTION 1. Section 594 of the Penal Code is amended to~~
25 ~~read:~~

26 ~~594. (a) Every person who maliciously commits any of the~~
27 ~~following acts with respect to any real or personal property that is~~
28 ~~not his or her own, in cases other than those specified by state law,~~
29 ~~is guilty of vandalism:~~

30 ~~(1) Defaces with graffiti or other inscribed material.~~

31 ~~(2) Damages.~~

32 ~~(3) Destroys.~~

33 ~~Whenever a person violates this subdivision with respect to real~~
34 ~~property, vehicles, signs, fixtures, furnishings, or property~~
35 ~~belonging to any public entity, as defined by Section 811.2 of the~~
36 ~~Government Code, or the federal government, it shall be a~~
37 ~~permissive inference that the person neither owned the property~~
38 ~~nor had the permission of the owner to deface, damage, or destroy~~
39 ~~the property.~~

~~(b) (1) If the amount of defacement, damage, or destruction is four hundred dollars (\$400) or more, vandalism is punishable by imprisonment in the state prison or in a county jail not exceeding one year, or by a fine of not more than ten thousand dollars (\$10,000), or if the amount of defacement, damage, or destruction is ten thousand dollars (\$10,000) or more, by a fine of not more than fifty thousand dollars (\$50,000), or by both that fine and imprisonment.~~

~~(2) (A) If the amount of defacement, damage, or destruction is less than four hundred dollars (\$400), vandalism is punishable by imprisonment in a county jail not exceeding one year, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment.~~

~~(B) If the amount of defacement, damage, or destruction is less than four hundred dollars (\$400), and the defendant has been previously convicted of vandalism or affixing graffiti or other inscribed material under Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7, vandalism is punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than five thousand dollars (\$5,000), or by both that fine and imprisonment.~~

~~(c) Upon conviction of any person under this section for acts of vandalism consisting of defacing property with graffiti or other inscribed materials, the court shall, when appropriate and feasible, in addition to any punishment imposed under subdivision (b), order the defendant to clean up, repair, or replace the damaged property himself or herself, or order the defendant, and his or her parents or guardians if the defendant is a minor, to keep the damaged property or another specified property in the community free of graffiti for up to one year. Participation of a parent or guardian is not required under this subdivision if the court deems this participation to be detrimental to the defendant, or if the parent or guardian is a single parent who must care for young children. If the court finds that graffiti cleanup is inappropriate, the court shall consider other types of community service, where feasible.~~

~~(d) If a minor is personally unable to pay a fine imposed for acts prohibited by this section, the parent of that minor shall be liable for payment of the fine. A court may waive payment of the fine, or any part thereof, by the parent upon a finding of good cause.~~

- 1 ~~(e) As used in this section, the term “graffiti or other inscribed~~
2 ~~material” includes any unauthorized inscription, word, figure,~~
3 ~~mark, or design, that is written, marked, etched, scratched, drawn,~~
4 ~~or painted on real or personal property.~~
5 ~~(f) The court may order any person ordered to perform~~
6 ~~community service or graffiti removal pursuant to subdivision (e)~~
7 ~~to undergo counseling.~~
8 ~~(g) This section shall become operative on January 1, 2002.~~